Supreme Court, U.S.
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Docket No. _____

In The

Supreme Court of the United States of America

October Term, 2001

IN THE MATTER OF
Stacy Jones
Petitioner,
v.
United States of America,
Respondent.

On Petition For a Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Stacy Jones Pro-Se
#10249-035
P. O. Box 7000
Texarkana, Texas 75505-7000

32pp

QUESTION PRESENTED

1. Whether the failure of the government to schedule crack cocaine,[1] pursuant to the Controlled Substances Act (C.S.A.) of 1970 makes the indictment a legal nullity.
   Whether "Legally New" drugs must be scheduled pursuant to the Controlled Substance Act (C.S.A. 1970) before offenses involving them can be prosecuted by the law.

2. Whether the failure of the Government to schedule crack cocaine pursuant to the controlled substances act (C.S.A.) of 1970 deprives the Court of subject matter jurisdiction.

3. Whether failure of the Government to schedule crack cocaine violates the Accardi Doctrine.

4. Whether the petitioner raised a Constitutional Issue in his 2255 that shows jurist of reason would find it debatable whether the 2255 states a valid claim of the denial of a Constitutional Right, and that jurists of reason would find it debatable whether the District Court was correct it its ruling.

5. Whether a federal prisoner who demonstrates that he is incarcerated for conduct that does not constitute a Federal Crime has made a substantial showing of the denial of a Constitutional right warranting issuance of a Certificate of Appealability under 28 U.S.C. 2255

[1] Petitioner uses the term "crack cocaine" for whatever is crack cocaine or cocaine free base rather than repeat both terms throughout the discussion .

PARTIES

Petitioner	Stacy Jones
Respondent	United States of America

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PETITION FOR A WRIT OF CERTIORARI

Stacy Jones, respectfully Petitions this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit in this case

OPINIONS BELOW

The order of the Fifth Circuit (APPX.A) is unreported. The opinion of the District Court (APPX.B and C) is unreported.

JURISDICTION

The order of the United States Court of Appeals for the Fifth Circuit was issued January 4,2002. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1) and pursuant to *Hohn v. United States* 524 US 236 (1998).

CONSTITIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V of the United States Constitution provides in pertinent part: no person shall be *** deprived of *** liberty *** without due process of law.

Amendment V of the United States Constitution provides in pertinent part: *** guarantees that the accused has been indicted by a grand jury which is the basis for jurisdiction.

Crack cocaine has not been established by Congress or the Government Controlled Substance Act (C.S.A.) of 1970; 21 U.S.C. 801, 802, 811, and 812; the Administrating Procedure Act (A.P.A.) 5 U.S.C. 551-559 and the Food Drug and Cosmetic Act 21 U.S.C. 310 *et seq*, Accardi Doctrine pursuant to *Accardi v. Shaughnessy* 371 U.S. 260 (1954).

STATEMENT OF THE CASE

Petitioner was indicted on April 22, 1998 in a five (5) count indictment. Count one charging Petitioner with knowingly and intentionally conspiring to distribute and posses fifty (50) grams or more of a mixture or substance containing cocaine base, also known as crack cocaine, and 5 Kilograms or more of a mixture or substance containing crack cocaine, also known as powder cocaine in violation of Title 21, United States Code, Section 841 (a) (1).

Count three charged the Petitioner with knowingly and intentionally attempting to posses with intent to distribute fifty (50) grams or more of a mixture or substance containing cocaine base, also known as crack cocaine in violation of Title 21, United States Code, Section 841 (a) (1).

On September 21, 1999 Petitioner entered a plea of guilty to counts charged.

On June 16, 2000 the District Court recalled its acceptance of the Petitioners guilty plea and reinstated the Petitioners plea of not guilty on all counts.

On August 1, 2000 Petitioner plead guilty to a new plea agreement to Count-1.

On August 4, 2000, the Petitioner was sentenced to one hundred eighty eight months (188) imprisonment.

The Petitioner did not file a direct appeal on the plea or sentence.

On July 26, 2001, Petitioner filed his 28 U.S.C. 2255 in the District Court.

On August 20, 2001, the District Court filed its Memorandum Ruling (APPX.C) and order (APPX.B) denying his 28 U.S.C. 2255.

On or about September 10, 2001, Petitioner filed his Notice of Appeal to the Fifth Circuit Court of Appeals.

On or about September 18, 2001, the District Court denied the Petitioner a Certificate of Appealability.

On January 4, 2002 the Fifth Circuit issued its order denying a Certificate of Appealability

REASONS FOR GRANTING THE PETITION

The statutory and regulatory history, along with the United States Constitution clearly demonstrate that the statues cited in Petitioner's indictment as predicates for the alleged criminal activity are a **legal nullity**. See *United States of America v, Sabretech Inc* 00-14516 (11th Cir. 10-31-2001)

The Government has failed to give petitioner and other similarly situated individuals due process by failure to follow their own administrative rules by not "**ever**" scheduling **crack cocaine.**

The Governments failure to schedule **crack cocaine** violates this Court's decision in *United States v. Generix Drug Corp* 460 US 459 (1983) and decisions in *United States v. Housky* 751 F. Supp 1446, 1447 (D. Nev. 1990), *United States v. Viernes* 763 F. Supp 1068, 1071 (D. Hawaii 1991), *United States v. Deisch* 20 Fed. 130, 149 (5th Cir. 1994).

I. Rules of Statutory Construction Mandate that the Controlled Substance Act of 1970, 21 U.S.C. 801 et seq, 21 U.S.C. 301 et. seq. and the Administrative Procedures Act 5. U.S C. 551-559 Be Read Consistently.

"It is a Fundamental Canon of Statutory Construction that the words of a statue must be read in their context, and with a view to their place in the overall statutory scheme. Court must therefore interpret the statue as a symmetrical and coherent regulatory scheme" *Food and Drug Administration v. Brown and Williamson Tobacco Corporation* 529 U.S. 120, 123 (2000).

Applying this Canon of Statutory Construction to the Controlled Substance Act of 1970 (C.S.A. 1970); 21 U.S.C. 801et seq., the Administrative Procedure Act 5 U.S.C. 551-559; Food, Drug and Cosmetic Act 21 U.S.C. 301 et seq. requires that these statues be read consistently to require the government to follow their own

administrative rules in designating a drug.

II <u>The Governments Continued Refusal to Schedule Crack Cocaine as a Drug, Violates the Accardi Doctrine</u>.

The District Courts decision along with the 5th Circuit Order deepens a conflict within the Government and the Courts of Appeals and District Courts, of whether crack cocaine is schedule or not, and or needs to be scheduled. The Chemical Composition Chart (APPX.D) is clear beyond peradventure that cocaine and crack cocaine are (2) two distinct drugs, requiring scheduling, pursuant to the statues and administrative rules of the Government. The Accardi Doctrine provides that an Administrative Agency must follow its own Procedural Rules, if those rules will affect an individuals rights *Accardi v. Shauganessy* 347 U .S. 260 (1954). This Court in *Morton v. Ruiz* 415 U.S. 199 (1974) held that the Accardi Doctrine also apples to Procedural Rules found in an Agencies Internal Manual.

III <u>Failure to Schedule Crack Cocaine Leaves No Predicate For the Alleged Criminal Activity.</u>

The District Court and 5th Circuits failure to address this issue in any shape, form, fashion, or words that could comport to address makes it clear that they agree that the drug crack cocaine has "**<u>never</u>**" been scheduled. In the 1986 Legislative Session no less than (5) five Bills were introduced for the purpose of criminalizing crack cocaine. Each and every one of them began with a Provision to legislatively schedule crack cocaine in Schedule I. However, and what is incomprehensible is that when these bills emerged from the Judiciary Committee all the Scheduling Provisions for crack cocaine had been completely stricken and it was never discussed again, but in the same session of Congress, these same Committees scheduled cocoa tea?

Petitioner knows it will be hard for this Court to admit that all these convictions and citizens have been imprisoned for something that was not a crime under the Law. It is evident that it so politically embarrassing that the Government has made the decision over the years to just turn a blind eye to avoid the problem.

Today, the known facts and the absence of candor on the part of the Government and the 5th Circuit serves as persuasive evidence that the failure to schedule crack is a gross dereliction of Due Process found under the Constitution.

IV The Court Should Resolve the Split Among the Circuit Courts of Appeals and the District Courts.

The 1st Circuit in 1994 stated, "Here the term cocaine base was neither irrelevant nor unfairly prejudicial. The indictment served as notice to Lewis of the nature of the charges against him. Indeed identifying the substance as cocaine base was an essential element of the Governments case against Lewis" *United States v. Lewis* 40 F3d 1325, 1346 (1st cir 1994)

"Defendants cannot be indicted for distributing a drug that was not placed on the list of controlled substances" *United States v. Caudle* 828 F2d 1111, 1112 (5th Cir 1987)

United States v. Brown 859 F2d 974, 976 (D.C. Cir 1988) defining crack as cocaine possessing a hydroxyl radical.

United States v. Gaulteau 4 F3d 1003, 1004 (D.C. Cir 1993) acknowledging that the definition hydroxyl radical was simply incorrect.

"Neither cocaine base or crack cocaine nor any equivalent term is mentioned in Section 841 (a) or in any of the controlled substance schedules; nor is their anything in the controlled substance schedules which can be said to describe cocaine base (or crack cocaine) as a discrete variety or type of cocaine". *United States v. Deisch* 20 F3d 130, 149 (5th Cir. 1994).

V The Issue Presented is Recurring and of Great Practical Importance.

The conflict among the circuits over "crack cocaine" is a constitutional issue of great practical and doctrinal significance. "Crack Cocaine" is an important part of the burgeoning Federal Criminal Code, and is the subject of frequent litigation in the Federal Courts, particularly *United States v. Barbosa* 271 F3d 438 (3rd Cir. 2001), which further widens the splits among the circuits (see **70 CRL 144**). A decision in this case would provide guidance to the lower courts to provide their critical and constitutionally compelled function. Resolving this issue that has divided the Courts of Appeals would give this Court the opportunity to provide uniformity. If not resolved here, the questions presented in this petition will recur regularly in the Federal Courts with the outcome in each case depending on the location of the courthouse. This does not foster reliance on judicial decision, or promote evenhanded, predictable, or consistent development of legal principles.

VI The Question Presented in this Case on "Crack Cocaine" Makes a Substantial Showing of the Denial of a Constitutional Right.

It cannot be seriously disputed that this Court will be frequently asked to interpret and apply Section

2253 (c)(2). *Hohn v. United States* 524 US 236 (1998) set the parameters for this Court to review a Court of Appeals denial of a certificate of appealability. Petitioner has presented a serious and unsettled and therefore appealable question to this Court. Without this Court's interference an individual convicted of **lawful** conduct may languish in prison without recourse. It is difficult to conceive of a more egregious denial of the constitutional right to due process than incarceration for conduct that is not a crime. This violates constitutional guarantees against deprivation of liberty without due process of law.

Neither the District Court nor the Fifth Circuit Court of Appeals reached the merits of petitioners claim on "crack cocaine", bringing into play *Slack v. McDaniel* 98-6322, April 26,2000 United States Supreme Court #2.

In the interest of judicial consistency and to protect petitioner's due process rights, this Court should resolve these splits.

CONCLUSION

In petitioner's case, the government made a charging decision and asked a grand jury to indict him for crack cocaine, knowing it was not a scheduled drug, and pursuant to the Accardi Doctrine, was and then remains today and uncontrolled substance, not subject to prosecution, leaving the Court without Subject Matter Jurisdiction.

Stacy Jones

Stacy Jones

APPENDIX

APPENDIX-1 OPINION OF THE FIFTH CIRCUIT COURT OF APPEALS FILED ON JANUARY 4, 2002

U.S. COURT OF APPEALS
FILED
JAN 04 2002
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 1-31090
USDC Nos. 01-CV-1422
99-CR-50046-2

UNITED STATES OF AMERICA
Plantiff - Appellee

v.

STACEY JONES, also known as Pokey
Defendant – Appellant

Appeal from the United States District Court for the Western District of Louisiana

---

ORDER:

Stacey Jones, federal prisoner #10249-035, request a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion. The district court denied his ineffective-assistance claims on the merits and found that he had procedurally defaulted his remaining

claims because they had not been raised on direct appeal. Jones argues that (1) the trial court lacked subject-matter jurisdiction over his conviction and sentence because crack cocaine has not been included in the schedule of controlled substance under the Controlled Substance Act; (2) his sentence violated *Apprendi v. New Jersey,* 530 U.S. 466 (2000), because the indictment did not allege the drug quantity for which he was sentenced; (3) the Justice Department and other Government agencies violated the principles of *Accardi v. Shaughnessy,* 347 U.S. 260 (1954), because they failed to list crack cocaine as a controlled substance; (4) Jones pleaded guilty to a count that charged him with possession of both crack cocaine and powder cocaine; (5) the Government did not test the substance alleged to be crack cocaine; and (6) Jones plead guilty to count one of the indictment but he was sentenced based on a presentencing report that was prepared based on his initial plea of guilty to count three of the indictment.

Jones has failed to make a substantial showing of the denial of a constitution right. *See Slack v. McDaniel,* 529 U.S. 473, 478 (2000). Accordingly, his request for a COA is DENIED.

" S

ROBERT M. PARKER
UNITED STATES CIRCUIT JUDGE

FILED
USDC, WESTERN DISTRICT OF L.
ROBERT H. SHEMWELL, CLERK
DATE 8/20/01
BY CW

APPENDIX-2 ORDER OF THE UNITED STATES DISTRICT COURT WESTERN DIVISION FILED AUGUST 20, 2001

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

STACEY JONES — CIVIL ACTION NOS. 01-1422 & 01-1423
MARCUS JONES — CRIMINAL ACTION NO. 99-50046-01 & 02

VERSES — JUDGE DONALD E WALTER

UNITED STATES OF AMERICA

MAGISTRATE JUDGE PAYNE

ORDER

Before this Court are Motions under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody [Doc. ##102 and 103] filed by Petitioners, Stacey Jones and Marcus Jones.

IT IS ORDERED that the Petitioners' Motions under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Federal Custody [Doc. ## 102 and 103] be and hereby are **DENIED.**

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 17 day of August, 2001.

"S

DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

FILED
USDC WESTERN DISTRICT OF LA
ROBERT H. SHEMWELL, CLERK
DATE 8/20/01
BY

APPENDIX-3 MEMORANDUM AND RULING OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISANA SHREVEPORT DIVISION AUGUST 18, 2001.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

STACEY JONES	CIVIL ACTION NOS. 01-1422 & 01-1423
MARCUS JONES	CRIMINAL ACTION NO. 99-50046-01 &02
VERSES	JUDGE DONALD E. WALTER
UNITED STATES OF AMERICA	MAGISTRATE JUDGE PAYNE

MEMORANDUM RULING

Before this court are Marcus Jones and Stacey Jones' Motions under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody [Doc. ##102 and 103, respectively]. For the reasons assigned herein, the Jones' Motions [Doc. ##102 and 103] are **DENIED.**

STATEMENT OF THE CASE

On April 22, 1999, the Petitioners were indicted in a five count Indictment [Doc. #1]. Count One charged the Petitioners with knowingly

and intentionally conspiring to distribute and possess "fifty (50) grams or more of a mixture or substance containing cocaine base, also known as crack cocaine, and 5 kilograms or more of a mixture or substance containing cocaine, also known as powder cocaine…in violation of Title 21, United States Code, Section 841(a)(1)[.]" Count Three charged the Petitioners with knowingly and intentionally attempting to possess with the intent to distribute "fifty (50) grams or more of a mixture or substance containing cocaine base, also known as crack cocaine…in violation of Title 21, United States Code, Section 841(a)(1)[.]"

On September 21,1999, the Petitioners each entered a plea of guilty to Count Three. (Mins. Ct. [Doc ##51 and 55].)

On June 16, 2000, this court recalled its acceptance of the Petitioners' guilty pleas and reinstated the Petitioners' plea of not guilty to all counts. (Scheduling Order [Doc. #83].)

On August 1,2000, the Petitioners each entered a plea of guilty to Count One. (Mins. Ct. [Doc. ##91 and 93].)

On August 4, 2000, Petitioner Marcus Jones was sentenced to one hundred eight-eight (188) months imprisonment and Petitioner Stacey Jones was sentenced to two hundred ninety-two (292) months imprisonment. (J. Crim. Case [Doc. ##97 and 92, respectively] at 2.)

The Petitioners never appealed either their pleas or sentences. (pets.' Brs. Supp. Pets.' Mots. [Doc. ##102 and 103] at 2.)

On July 26, 2001, the Petitioners filed the instant Motions [Doc. ##102 and 103], seeking relief pursuant to 28 U.S.C. §2255.

ANALYSIS

The Petitioners' Motions [Doc. ##102 and 103] are based on claims of ineffective assistance of counsel. (Pets' Brs. Supp. Pets.' Mots [Doc. ##102 and 103] at 3.) Their ineffective assistance of counsel claims are predicated on an argument that this Court lacked subject matter jurisdiction because the Indictment [Doc. #1] charged the Petitioners with offenses that were not criminal. Specifically, the Petitioners challenge those counts related to the possession and attempted possession of cocaine base, "crack cocaine." (Id.) The Petitioners allege that cocaine base, "crack cocaine," was a new drug that that not been scheduled as a controlled substance prior to the filing of their Indictment [Doc. #1]. (Id.) Therefore, the Petitioners claim that their Indictment [Doc. #1] failed to charge a crime and that their pleas/convictions as to Count One of that Indictment [Doc. #1] were defective and/or constitutionally infirm. (Id.)

Further, although it is not clear from their Motions [Doc. ##102 and 103], the Petitioners also appear to seek relief because Count One of their indictment charged the possession of two drugs, cocaine base, "crack

cocaine," and cocaine powder. (See Pets.' Brs. Supp. Pets.' Mots. [Doc. ##102 and 103] at 17-18 and 20-21.) Because two controlled substances were charged in Count One, the Petitioners claim that the length of their sentences should have been limited to the lesser of the sentences that the Court could have imposed based on Count One. That is, the Petitioners claim that they should have been sentenced for possession of cocaine powder and not for cocaine base, "crack cocaine." Alternately, the Petitioners allege that their sentences were imposed in violation of the principles established in Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000). (Id. at 17-18.)

Finally, the Petitioners claim that there was error because the substance that they were charged with possessing was never tested to see if it would burn. (Id. at 21-22.) Thus, the Petitioners claim it is uncertain whether this substance was cocaine base, "crack cocaine," or cocaine powder. (Id.)

I The relief requested by the Jones is not properly sought in a §2255 motion.

"Habeas corpus relief is extraordinary and 'is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice." Kinder v. Purdy, 222 F.3d 209, 213 (5th

Cir. 2000) (quoting United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992)(citation omitted)). Further, to merit relief under 28 U.S.C.§2255 for an issue not raised in a direct appeal, a petitioner must demonstrate "both cause for the procedural default in not raising the issue on direct appeal and some form of actual prejudice that he suffered ad a result of the error." United States v. Samuels, 59 F.3d 526,528 (5th Cir. 1995) (footnote omitted); United States v. Placente, 81 F.3d 555, 558 (5th Cir. 1996). Finally, [n]on-constitutional errors may not be raised in a section 2255 petition unless the defendant demonstrates that 'the error could have been raised on direct appeal, and if condoned, would result in a complete miscarriage of justice[.]'" Samuels, 59 F.3d at 528 (footnote omitted).

In the instant matter, the Jones fail to offer any cause for their procedural default. They only state that an appeal was not filed. (Pets' Brs. Supp. Pets.' Mots [Doc. ##102 and 103] at 2.) Therefore, Motions [Doc ##102 and 103] must be denied.

Therefore, even if the Jones proffered an acceptable reason for their procedural default, they would not be entitled to relief under §2255. Instead, each of the Jones' challenges would fail because they cannot demonstrate that any prejudice was caused by the errors that they assert.

A. The Petitioners' claim regarding this Court's subject matter jurisdiction are flawed.

The Petitioners argue that they received ineffective assistance of

counsel in violation of Strickland v. Washington, 466 U.S. 668, 104 S,Ct. 2052, 80 L.Ed.2d 674 (1984), when their trial counsels failed to claim that this Court lacked subject matter jurisdiction. (Pets' Brs. Supp. Pets.' Mots. [Doc. ##102 and 103] at 3.) Specifically, the Petitioners allege that cocaine base, "crack cocaine," is not a controlled substance and thus cannot support a conviction under 21 U.S.C. §841(a)(1).(Id.) However, the Petitioners; claims are counter to Fifth Circuit precedent. United States v. Deisch, 20 F.3d 139, 151 (5th Cir. 1994) ("Cocaine base, as a form of cocaine, was a Controlled substance before the term 'cocaine base, was ever introduced into Title 21[]").

Therefore, the Petitioners' arguments that they received ineffective assistance of counsel when their trial counsels did not challenge this Court's subject matter jurisdiction are without merit. Thus, the failure of the Petitioners' trial counsels to raise these issues was not ineffective assistance of counsel as it did not fall below objective standards of reasonableness or cause prejudice to the Petitioners. See Strickland, 466 U.S. at 687-88, 104 S.Ct. at 2064.

B The Petitioners' challenges regarding the length of their sentences is not justified.

The Petitioners also challenge the length of their sentences based on alleged Apprendi violations. (See Pets.' Brs. Supp. Pets.' Mots. {Doc. ##102-103] at 17-18.) Specifically, the Petitioners challenge the

length of the sentences that this Court imposed. (Id.) However, the Fifth Circuit has found that there is no Apprendi error when a court utilizes its discretion and imposes (see footnote)

> (foot note) The Petitioners also challenge that their Indictment was defective as if charged them with possession of cocaine base," crack cocaine," which the Petitioners claim is an uncontrolled drug. (Pets.' Brs. Supp. Pets.' Mots. [Doc. ##102-103] at 16-17.0 The Petitioners argue that their Indictment[Doc. #1] lacked s *corpus delicti* as it charged them with possession of an "uncontrolled drug[.]" (Id.) However, for the reasons discussed above, cocaine base, "crack cocaine," was a controlled substance when the Petitioners were indicted.
>
> Alternately, the Petitioners claim to have suffered prejudice because the government did not follow its own procedural rules before criminalizing the possession of attempted possession of cocaine base, "crack cocaine." See Accardi v. Shaughnessy, 347 U.S. 260,74 S. Ct. 499,98 L.Ed 681 (1954).
>
> However, the Petitioners do not allege that there was error, procedural or otherwise, when cocaine was designated as a controlled substance. As cocaine base was scheduled, in fact if not in name, as a controlled substance at the moment that cocaine was scheduled as a controlled substance, the Petitioners fail to establish any of their alleged Accardi violations. See Deisch, 20 F.3d at 151.
>
> Thus, the Petitioners' Indictment [Doc. #1] was sufficient, and the Petitioners' counsels had no basis on which to challenge the Indictment [Doc. #1]. Therefore the Petitioners fail to demonstrate that their counsels' failure to challenge their Indictment [Doc. #1] satisfies either the deficient counsel or prejudice prong of Strickland. (end of footnote)

a sentence that is less than the statutory maximum for the crime of which the defendant has been convicted. United States v. Clinton , No. 99-30253, 2001 WL 721366, at *2 (5th Cir. June 27, 2001) (expressly rejecting "the argument that Apprendi applies to enhancements based upon the sentencing

guidelines, whether tied to quantity or some other relevant fact, which do not cause the sentence to exceed the statutory range[]").

Assuming that the maximum length of the Jones' sentences should be limited to that imposed for an offense involving fifty grams of cocaine base ("crack cocaine"), 21 U.S.C. §841(b)(1)(A) provides for a sentence range of ten years to life for an offense.

[2]Thus, both Marcus Jones' sentence of 188 months and Stacey Jones sentence of 292 months were below the maximum statutory sentence.

Therefore, the failure of the Petitioners' trial counsels to raise these issues did not fall below objective standards of reasonableness or cause prejudice to the Petitioners. See Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064.

C. The Petitioners' claim regarding a multiple-object conspiracy involving cocaine powder and cocaine base, "crack cocaine," fail.

The Petitioners next argue that they were prejudiced Because Count One of their Indictment {Doc. #1] charged that they conspired to distribute both more than fifty grams of cocaine base, "crack cocaine," and more the five kilograms of powder cocaine.

The Petitioners argue that they therefore were entitled to lower sentences. See United States v. Cooper, 966 F2d 936,940 (5th Cir. 1992) (the punishment for participating in a multiple-object conspiracy may not exceed the statutory maximum for the offense carrying the least sever penalty).

In fact, 21 U.S.C. §841(b)(1)(A) establishes a statutory sentence range of ten years to life for offenses involving "5 kilograms or more of a mixture or substance containing a detectable amount" of cocaine. Likewise, 21 U.S.C. §841(b)(1)(A) provides for a sentence range of ten years to life for an offense involving fifty grams of cocaine base ("crack cocaine").

Therefore, the Petitioners' arguments are without merit, and the failure of the Petitioners' trial counsels to raise these issues did not fall below objective standards of reasonableness or cause prejudice to the Petitioners. See Strickland, 466 U.S. at 687-88, 104 S. Ct. 2064.

D. The Petitioners' claims regarding the Government's failure to conduct burn testing of the cocaine base,"crack cocaine," involved in the Petitioners' offenses are without merit.

The Petitioners' final allegations are that the Government failed to conduct burn testing of the cocaine base, "crack cocaine," involved in the offenses. (Pets.' Brs. Supp. Pets.' Mots.[Doc. ##102 and 103] at 21-

22.) Because these allegations address alleged non-constitutional errors, they "may not be raised in a section 2255 petition unless the [Petitioners] demonstrate[] that 'the error could not have been raised on direct appeal, and if condoned, would result in a complete miscarriage of justice[.]'" Samuels, 59F.3d at 528 (footnote omitted). The Petitioners do not offer any evidence on either of these issues.

Indeed, the Petitioners both admitted that they participated in offenses involving cocaine base, "crack cocaine," and not powder cocaine. (Stipulated Factual Bases Guilty Plea [Doc. #96].)

Therefore, the Petitioners' arguments are without merit. Further, the failure of the Petitioners' trial counsels to raise these issues did not fall below objective standards of reasonableness or cause prejudice to the Petitioners. See Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064.

CONCLUSION

For the above reasons, the constitutional errors alleged by the Petitioners fail to state a ground for the Court to grant the Petitioners' Motions [Doc ##102 and 103]. The petitioners are unable to demonstrate that they suffered any prejudice as a result of these alleged errors. See Samuels, 59F.3d at 528. Further, the Jones' Motions [Do. ##102 and 103] are denied insofar as they alleged non-constitutional errors, such as the failure of the Government to conduct burn test on the cocaine base, "crack cocaine" involved in their offenses, because these allegations did not, assuming that they have been established, "result in a complete miscarriage of justice[.]" (Id)

For the foregoing reasons, the Court finds that the Petitioners' Motions under 28 U.S.C.§2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody [Doc. ##102 and 103] must be **DENIED.**

THUS DONE AND SIGNED in Shreveport, Louisiana, this 17 day of August, 2001.

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DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

APPENDIX-6 CHEMICAL COMPOSITION CHART OF COCAINE AND CRACK COCAINE.

ACID BASE REACTION : CONVERSION OF COCAINE BASE TO COCAINE HYDROCHLORIDE.

COCAINE BASE + HYDROGEN CHLORIDE (ACID) ⟶ COCAINE HYDROCHLORIDE (SALT)

$C_{17}H_{21}NO_4$ + HCl ⟶ $C_{17}H_{22}NO_4Cl$

303 340

COC BASE + HCl ⟶ COC · HCl